



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

MAY 07 2012

UNITED PARCEL SERVICE
E-MAIL VERIFICATION REQUESTED

Charles T. Wehland, Esq.
Jones Day
77 West Wacker
Chicago, Illinois 60601

Re: Notice of Violation and Opportunity to Show Cause

Dear Mr. Wehland:

Enclosed is a Notice of Violation (NOV) issued to White Springs Agricultural Chemicals, Inc. (White Springs), under Section 113(a) of the Clean Air Act (CAA), 42 U.S.C. § 7413(a). In this NOV, the U.S. Environmental Protection Agency, EPA Region 4 notifies White Springs of violations of the CAA requirements for the Prevention of Significant Deterioration, 42 U.S.C. §§ 7470 – 7479, title V, 42 U.S.C. §§ 7661a and 7661b, and violations of the Florida State Implementation Plan at its facility located at 15843 S.E. 78th Street, White Springs, Florida.

Please note that the NOV requests that you contact EPA within **seven (7) days** of receipt of this letter to schedule a conference for the week of May 21, 2012. Questions should be directed to Ms. Marlene J. Tucker, Associate Regional Counsel at 404 562-9536 or by e-mail at tucker.marlene@epa.gov.

Sincerely,

A handwritten signature in cursive script, appearing to read "Beverly H. Banister".

Beverly H. Banister
Director
Air, Pesticides and Toxics
Management Division

Enclosure

cc : Karin Torain (w/enclosure)
PotashCorp

Brian Accardo (w/enclosure)
Division of Air Resource Management
Florida Department of Environmental Protection

**United States Environmental Protection Agency
Region 4 - Atlanta, Georgia**

In the matter of:

**White Springs Agricultural Chemicals,
Inc.**

White Springs, Florida

Clean Air Act

Notice of Violation

NOTICE OF VIOLATION

This Notice of Violation (NOV) is issued pursuant to Section 113 of the Clean Air Act (CAA or the Act), as amended, 42 U.S.C. § 7413, to White Springs Agricultural Chemicals, Inc. (hereinafter referred to as "White Springs", "Company", or "Respondent"), for violations of the CAA and the Florida State Implementation Plan at its facility located at 15843 S.E. 78th Street, White Springs, Florida (the Facility). Section 113 requires the Administrator of the United States Environmental Protection Agency (EPA) to notify a person that has violated a requirement of the applicable state implementation plan (SIP) or permit of such finding of the violation. The authority to issue NOV's has been delegated to the Director of the Air, Pesticides, and Toxics Management Division, EPA, Region 4.

STATUTORY AND REGULATORY BACKGROUND

1. The CAA is designed to protect and enhance the quality of the nation's air so as to promote the public health and welfare and the productive capacity of its population. Section 101(b)(1) of the Act, 42 U.S.C. § 7401(b)(1).
 - A. The National Ambient Air Quality Standards
2. Section 108(a) of the Act, 42 U.S.C. § 7408(a), requires the Administrator of EPA to identify and prepare air quality criteria for each air pollutant, emissions of which may endanger public health or welfare, and the presence of which results from numerous or diverse mobile or stationary sources. For each such "criteria" pollutant, Section 109 of the Act, 42 U.S.C. § 7409, requires EPA to promulgate national ambient air quality standards (NAAQS) requisite to protect the public health and welfare.

3. Pursuant to Section 109, 42 U.S.C. § 7409, EPA has identified sulfur dioxide (SO₂), carbon monoxide, lead, nitrogen dioxide, ozone, and particulate matter as criteria pollutants, and has promulgated NAAQS for such pollutants. 40 C.F.R. Part 50.
4. Under Section 107(d) of the Act, 42 U.S.C. § 7407(d), each state is required to designate those areas within its boundaries where the air quality is better or worse than the NAAQS for each criteria pollutant, or where the air quality cannot be classified due to insufficient data. An area that meets the NAAQS for a particular pollutant is termed an "attainment" area with respect to such pollutant. An area that does not meet the NAAQS for a particular pollutant is termed a "nonattainment" area with respect to such pollutant.
5. An area that cannot be classified as either "attainment" or "nonattainment" with respect to a particular pollutant due to insufficient data is termed "unclassifiable" with respect to such pollutant.
6. At all times relevant to this NOV, Hamilton County, the area in which the Facility is located, has been classified as attainment for SO₂.

B. Prevention of Significant Deterioration

7. Part C of Title I of the Act, 42 U.S.C. §§ 7470-7492, sets forth requirements for the prevention of significant deterioration of air quality in those areas designated as either attainment or unclassifiable for purposes of meeting the NAAQS standards. These requirements are designed to protect public health and welfare, to assure that economic growth will occur in a manner consistent with the preservation of existing clean air resources, and to assure that any decision to permit increased air pollution is made only after careful evaluation of all the consequences of such a decision and after public participation in the decision making process. 42 U.S.C. § 7470. These provisions are referred to herein as the "PSD program." The PSD program (which applies in attainment or unclassifiable areas), along with the nonattainment area requirements are each a part of what is referred to as "New Source Review" or the "New Source Review program" (NSR).
8. Section 165(a) of the Act, 42 U.S.C. § 7475(a), among other things, prohibits the construction and operation of a "major emitting facility" in an area designated as attainment or unclassifiable unless a permit has been issued that comports with the requirements of Section 165, including that the facility is subject to the best available control technology (BACT) for each pollutant subject to regulation under the Act that is emitted from the facility.

9. Section 169(1) of the Act, 42 U.S.C. § 7479(1), designates sulfuric acid plants which emit or have the potential to emit one hundred tons per year or more of any pollutant to be “major emitting facilities.”
10. Section 169(2)(C) of the Act, 42 U.S.C. § 7479(2)(C), defines “construction” to include “modification” (as defined in Section 111(a) of the Act). “Modification” is defined in Section 111(a) of the Act, 42 U.S.C. § 7411(a), to be “any physical change in, or change in the method of operation of, a stationary source which increases the amount of any air pollutant emitted by such source or which results in the emission of any air pollutant not previously emitted.”
11. Sections 110(a) and 161 of the Act, 42 U.S.C. §§ 7410(a) and 7471, require each state to adopt, and submit to EPA for approval, a SIP that contains emission limitations and such other measures as may be necessary to prevent significant deterioration of air quality in areas designated as attainment or unclassifiable.
12. EPA has promulgated two largely identical sets of regulations to implement the PSD program. One set, found at 40 C.F.R. § 52.21, contains EPA’s own federal PSD program, which applies in areas without a SIP-approved PSD program. The other set of regulations, found at 40 CFR § 51.166, contains requirements that state PSD programs must meet to be approved as part of a SIP.
13. Florida administers a SIP-approved PSD program, which is governed by its PSD and permitting rules in Florida Administrative Code (F.A.C.) Chapters 62-210, formerly 17-210, and 62-212, formerly 17-212.
14. The Florida PSD regulations were originally approved by EPA into the Florida SIP on December 22, 1983, as Chapter 17-2. (48 Fed. Reg. 52713). EPA has since approved several amendments to the PSD portion and general permitting requirements of Florida’s SIP. Effective December 12, 1994, Florida’s air pollution rules formerly found in F.A.C. 17-2 were recodified and relevant chapters were relocated to Chapter 17-210 (Stationary Sources General Requirements), and Chapter 17-212 (Stationary Sources Preconstruction Review). (59 Fed. Reg. 52916).
15. Effective August 16, 1999, the PSD portion and general permitting requirements of Florida’s SIP were recodified again, this time to 62-210 and 62-212. (64 Fed. Reg. 32346). This revision also relocated the definitions that applied to Florida’s PSD program to F.A.C. 62-210.200. More recent amendments to incorporate the NSR reform regulations into the Florida SIP, became effective on July 28, 2008. (73 Fed. Reg. 36435). A list of Florida regulations incorporated into Florida’s SIP is provided at 40 CFR § 52.520.

16. The relevant Florida PSD and general permitting regulations formerly found in Chapters 17-210 (Stationary Sources General Requirements); 17-212 (Stationary Sources Preconstruction Review); 62-210 (Stationary Sources General Requirements) and 62-212 (Stationary Sources Preconstruction Review) were incorporated into and were a part of the Florida SIP at the time of the modifications at issue in this case (referenced in Appendix A). All citations to such regulations herein, refer to the regulations as incorporated into and part of the Florida SIP applicable at the time of each modification alleged herein.
17. At all relevant times, the PSD regulations applied to any modification of a major facility in an area designated as attainment or unclassifiable, that would result in a significant net emissions increase.
18. Under the PSD regulations a proposed modification to a “major facility” is subject to preconstruction review requirements if [1] the facility to be modified would be subject to preconstruction review requirements if it were itself a proposed new facility; and [2] the modification would result in a significant net emissions increase of any pollutant regulated under the Act. F.A.C. 17-212.400(2)(d)4.a and 62-212.400(2)(d)4.a.
19. Under the PSD regulations, a proposed new sulfuric acid plant would be subject to preconstruction review requirements if it would have the potential to emit 100 tons per year or more of any pollutant regulated under the Act. F.A.C. 17-212.400(2)(e)2 [Table 212.400-2] and 62-212.400(d)2.b [Table 212.400-2].
20. Under the PSD regulations, a “major facility” is any facility which emits, or has the potential to emit 100 tons per year or more of any pollutant, or five tons per year or more of lead, or 30 tons per year or more of acrylonitrile. F.A.C. 17-210.200(40) and 62-210.200(173).
21. Under the PSD regulations, a “modification” is any physical change in, change in the method of operation of, or addition to a facility which would increase the actual emissions of any air pollutant, including any not previously emitted from the facility. F.A.C. 17-210.200(46) and 62-210.200(185).
22. The PSD regulations define “actual emissions” as the average rate, in tons per year, at which the unit actually emitted the pollutant during a two-year period which precedes the particular date and which is representative of normal operation. In addition, for any emissions unit that has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date. F.A.C. 17-212.200(2) and 62-210.200(12).

23. The PSD regulations define “potential emissions” or “potential to emit” as the maximum capacity of a source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is enforceable. F.A.C. 17-212.200(57) and 62-210.200(225).
24. Under the PSD regulations, a “significant net emissions increase” of a pollutant regulated under the Act is a net emissions increase equal to or greater than the applicable significant emission rate listed in Table 212.400-2 at F.A.C. 17-212.400(2)(e)2 and 62-212.400(e)2. The rate listed in Table 212.400-2 for SO₂ is 40 tons per year.
25. Under the PSD regulations, a “net emissions increase” results when the sum of all of the contemporaneous creditable increases and decreases in the actual emissions of the facility, including the increase in emissions of the modification itself and any increases and decreases in quantifiable fugitive emissions, is greater than zero. F.A.C. 17-212.400(2)e and 62-212.400(2)e.
26. Under the PSD regulations, “construction” means the act of performing on-site fabrication, erection, installation or modification of an emission unit or facility of a permanent nature, including but not limited to, installation of foundations or building supports, laying of underground pipe work or electrical conduit; and fabrication or installation of permanent storage structures, component parts of an emission unit or facility, associated support equipment, or utility connections. F.A.C. 17-212.200(21) and 62-210.200(85).
27. No owner or operator of a facility or modification subject to the preconstruction review requirements of the Florida PSD regulations shall begin construction prior to obtaining a permit to construct that complies with all the provisions of F.A.C. 17-212.400 (PSD), 62-212.400 (PSD), 17-210.300 (Permits Required) and 62-210.300 (Permits Required), including implementation of BACT for each pollutant subject to regulation; performance of preconstruction air quality monitoring analysis; performance of an ambient impact analysis; and a demonstration that the modification will not cause or contribute to a violation of the NAAQS, among other things. F.A.C. 17-212.400(5) and (6), and 62-212.400(5), (6) and (7).
28. The owner or operator of any emissions unit which emits or can reasonably be expected to emit any air pollutant shall obtain an

appropriate permit prior to beginning construction, modification, or initial or continued operation. F.A.C. 17-210.300 and 62-210.300.

29. Any construction permit issued under the PSD regulations shall contain all of the conditions and provisions necessary to ensure that the construction and operation of the facility or modification shall be in compliance with the requirements of the PSD regulations. F.A.C. 17-212.400(6)(a), 62-212.400(7)(a), 17-210.300(1) and 62-210.300(1).
30. Any operation permit issued for a facility or modification shall include all operating conditions and provisions necessary to ensure compliance with the PSD regulations. F.A.C. 17-212.400(6)(b), 62-212.400(7)(b), 17-210.300(2) and 62-210.300.
31. Upon expiration of the air operation permit for any existing facility or emissions unit, subsequent to construction or modification and demonstration of initial compliance with the conditions of the construction permit for any new or modified facility or emissions unit, or as otherwise provided, the owner or operator of such facility or emissions unit shall obtain a renewal air operation permit, an initial air operation permit, or an administrative permit, whichever is appropriate, in accordance with applicable requirements. F.A.C. 17-210.300(2) and 62-210.300.

C. Title V Program

1. Federal Title V Requirements

32. Section 502(a) of the CAA, 42 U.S.C. § 7661a(a), provides that no major source or certain other sources may operate without a Title V permit after the effective date of any permit program approved or promulgated under Title V of the Act. EPA first promulgated regulations governing the minimum elements for state operating permit programs on July 21, 1992. (57 Fed. Reg. 32295); *See also*, 40 C.F.R. Part 70, F.A.C. 17-213.400 and 62-213.400.
33. Section 503 of the CAA, 42 U.S.C. § 7661b, sets forth the requirements to submit a timely, accurate, and complete application for a permit, including information required to be submitted with the application. *See also*, F.A.C. 17-213.420 and 62-213.420.
34. Section 504(a) of the CAA, 42 U.S.C. § 7661c(a), requires that each Title V permit include enforceable emission limitations and standards, a schedule of compliance, and other conditions necessary to assure compliance with applicable requirements, including those contained in a state implementation plan. 42 U.S.C. § 7661c(a).

35. 40 C.F.R. § 70.1(b) provides that: "All sources subject to these regulations shall have a permit to operate that assures compliance by the source with all applicable requirements." *See also*, F.A.C. 17-213.400 and 62-213.400.
36. 40 C.F.R § 70.2 defines "applicable requirement" to include "(1) Any standard or other requirement provided for in the applicable implementation plan approved or promulgated by EPA through rulemaking under Title I of the Act that implements the relevant requirements of the Act, including revisions to that plan promulgated in part 52 of this chapter" *See also*, F.A.C. 17-210.200 and 62-210.200(29).
37. 40 C.F.R. § 70.7(b) provides that no source subject to 40 C.F.R. Part 70 requirements may operate without a permit as specified in the Act. *See also*, F.A.C. 17-213.400 and 62-213.400.
38. 40 C.F.R. § 70.5(a) and (c) require timely and complete permit applications for Title V permits with required information that must be submitted and 40 C.F.R. § 70.6 specifies required permit content. *See also*, F.A.C.17-213.420, 62-213.420, 17-213.440 and 62-213.440.
39. 40 C.F.R. § 70.5(b) provides that: "Any applicant who fails to submit any relevant facts or who has submitted incorrect information in a permit application shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information. In addition, an applicant shall provide additional information as necessary to address any requirements that become applicable to the source after the date it filed a complete application but prior to release of a draft permit." *See also*, F.A.C.17-213.420, 62-213.420, 17-213.440 and 62-213.440.

2. Florida's Title V Requirements

40. Florida's Title V program received final interim approval by EPA on September 25, 1995, and became effective on October 25, 1995. (*See* 60 Fed. Reg. 49343), and was granted final full approval by EPA on October 31, 2001. (*See* 66 Fed. Reg. 49837). *See also*, 40 C.F.R. Part 70, Appendix A. Applications were due on October 25, 1996, from Florida sources subject to Title V following EPA's interim approval of Florida's Title V program.
41. The Florida regulations governing the Title V permitting program are codified at F.A.C. 62-213 (Operation Permit for Major Sources of Air Pollution), and are federally enforceable pursuant to Section 113(a)(3).

42. All Title V sources are subject to the air operation permit requirements of F.A.C. 17-213.400 and 62-213.400.
43. A Title V source is a major source of air pollution. F.A.C.17-210.200, 62-210.200(175) and 62-210.200(188).
44. A major source of air pollution includes, among other things, a sulfuric acid plant that emits or has the potential to emit 100 tons per year or more of any regulated air pollutant. F.A.C. 17-212.200(4) and 62-210.200(173).
45. F.A.C. 17-213.420 (1) (a) and 62-213.420(1)(a) require sources to submit timely and complete permit applications for Title V permits with required information and F.A.C.17-213.420(3) and 62-213.420(3) specify required permit application content.
46. F.A.C. 17-213.420(1)(b)3 and 62-213.420(1)(b)3 require sources to submit additional information to supplement or correct an application promptly after becoming aware that an application contains incorrect or incomplete information.
47. F.A.C. 17-213.400 and 62-213.400 state that no Title V source “shall make any changes in its operation without first applying for and receiving a permit revision” if the change constitutes a modification, or violates any applicable requirement, among other things.

FACTUAL FINDINGS

48. White Springs owns and operates four sulfuric acid plants (Plants C, D, E and F) at its facility located in White Springs, Florida (Facility).
49. White Springs is a Delaware corporation doing business in the state of Florida, and is a wholly owned subsidiary of Potash Corporation of Saskatchewan, Inc. (PCS), a Canadian company. White Springs is hereinafter referred to as “Respondent.”
50. Respondent is a “person” within the meaning of Sections 113(a) and 502 of the CAA, 42 U.S.C. §§ 7413(a) and 7661a, and as defined in Section 302(e) of the CAA, 42 U.S.C. § 7602(e).
51. Respondent produces sulfuric acid at the Facility by burning elemental sulfur, converting the resulting sulfur dioxide into sulfur trioxide, and absorbing it into recirculating sulfuric acid solution.
52. Respondent uses the sulfuric acid to manufacture phosphoric acid which is ultimately used in the fertilizer and animal feed products.

53. The Facility is a “major source,” a “major facility” and a “major emitting facility” because it belongs to one of the 28 named source categories and has the potential to emit more than 100 tons per year of SO₂, a regulated air pollutant. 42 U.S.C. § 7479(1); and F.A.C. 17-210.200(34) and 62-210.200(173).
54. At all times relevant to this NOV, Hanover County, the area in which the Facility is located, has been designated as either attainment or unclassifiable for all criteria pollutants. *See also* 40 C.F.R. § 81.310.
55. The Facility currently operates under a Title V Permit (Number: V-0470002), that was issued by FDEP on June 4, 2007, and expires on June 4, 2012.
56. By an information request letter issued pursuant to the authority of Section 114 of the Act, 42 U.S.C. § 7414, dated May 28, 2008, EPA required PCS to submit specific information regarding all its nitric and sulfuric acid plants in the United States including the White Springs Facility.
57. PCS responded to EPA’s initial Section 114 information request on behalf of the Respondent on August 11, 2008. On June 15, 2010, EPA sent a second Section 114 information request to the Respondent. Respondent replied to the second information request with two separate submittals on July 2, and July 21, 2010.

**PARAGRAPHS 58-73 MOVED TO APPENDIX A
APPENDIX A CONTAINS INFORMATION CLAIMED TO BE
CONFIDENTIAL BUSINESS INFORMATION, AND IS BEING TREATED
AS SUCH UNTIL A FINAL DETERMINATION IS MADE**

FINDING OF VIOLATIONS

74. Upon review of the information provided by Respondent, and as described herein including, in Appendix A, EPA Region 4 has concluded that Respondent conducted capital projects on the four sulfuric acid units at the Facility which resulted in significant net emissions increases in SO₂.
75. The activities described in Appendix A are major modifications that resulted in a significant net emissions increases of SO₂ within the meaning of the CAA and F.A.C.17-212.400(2)(e)2, 62-212.400.2(e)2, 17-2.200(46) and 62-210.200(185). Respondent failed to apply for or obtain a PSD permit prior to commencing construction of such activities in violation of F.A.C. 17-210.300(1), 62-210.300(1), 17-212.400(5)(a)2 and 62-212.400(5)(a)2. Respondent failed to obtain an operating permit including all operating conditions and provisions necessary to ensure compliance with PSD, in violation of F.A.C. 17-210.300, 62-210.300, 17-12.400(6)(b)

and 62-212.400(7)(b). Respondent violated and continues to violate Section 165(a) of the Act, 42 U.S.C. § 7475(a), F.A.C. 17-212.400(5) and (6), 62-212.400(5), (6) and (7), 17-210.300 and 62-210.300, by commencing construction of, and continuing to operate a major modification at its White Springs Facility without applying for and obtaining a PSD permit. Respondent did not install BACT for the control of SO₂, and continues to operate its White Springs Facility without an operating permit containing all applicable requirements including BACT. White Springs violated and continues to violate the provisions cited in this paragraph, by failing to install and operate BACT for SO₂.

76. Since 1996, Respondent has failed to submit a timely, accurate, and complete Title V permit application for its White Springs Facility with information pertaining to the modifications identified in Appendix A and with information concerning all applicable requirements, including, but not limited to, the requirement to apply, install, and operate BACT for SO₂ at the White Springs Facility. Respondent also failed to supplement or correct the Title V permit applications for this Facility in violation of Sections 502, 503, and 504 of the Act, 42 U.S.C. §§ 7661a, 7661b and 7661c; the regulations at 40 C.F.R. Part 70, including, but not limited to, 40 C.F.R. §§ 70.1(b), 70.5, 70.6, and 70.7(b); and the Florida Title V provisions at F.A.C. 17-213.400 and 62-213.400; F.A.C. 17-213.420 and 62-213.420; and F.A.C. 17-213.440 and 62-213.440.

ENFORCEMENT PROVISIONS

77. Sections 113(a)(1) and (3) of the Act, 42 U.S.C. § 7413(a)(1) and (3), provide that the Administrator may bring a civil action in accordance with Section 113(b) of the Act, 42 U.S.C. § 7413(b), whenever, on the basis of any information available to the Administrator, the Administrator finds that any person has violated or is in violation of any requirement or prohibition of, inter alia, the PSD requirements of Section 165(a) of the Act, 42 U.S.C. § 7475(a); Title V of the Act, 42 U.S.C. §§ 7661-7661f, or any rule or permit issued thereunder; or the PSD provisions of the Florida SIP. *See also*, 40 C.F.R. § 52.23.
78. Section 113(b) of the Act, 42 U.S.C. § 7413(b), authorizes the Administrator to initiate a judicial enforcement action for a permanent or temporary injunction, and/or for a civil penalty of up to \$25,000 per day for each violation occurring on or before January 30, 1997; up to \$27,500 per day for each such violation occurring on or after January 31, 1997 and up to and including March 15, 2004; up to \$32,500 per day for each such violation occurring on or after March 16, 2004 through January 12, 2009; and up to \$37,500 per day for each such violation occurring on or after January 13, 2009, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by

31 U.S.C. § 3701, 40 C.F.R. § 19.4, and 74 Fed. Reg. 626 (Jan. 7, 2009), against any person whenever such person has violated, or is in violation of, *inter alia*, the requirements or prohibitions described in the preceding paragraph.

79. Section 167 of the Act, 42 U.S.C. § 7477, authorizes the Administrator to initiate an action for injunctive relief, as necessary to prevent the construction, modification or operation of a major emitting facility which does not conform to the PSD requirements in Part C of the Act.


OPPORTUNITY FOR CONFERENCE

Respondent is hereby offered an opportunity for a conference with EPA. The conference will enable Respondent to present evidence bearing on the violations, on the nature of the violations, and on any efforts it may have taken or proposes to take to achieve compliance. Respondent has the right to be represented by legal counsel.

A request for a conference must be made within seven (7) days of receipt of this Notice, and should be made in writing and addressed to:

Marlene J. Tucker
Associate Regional Counsel
Office of Regional Counsel, Region 4
U.S. Environmental Protection Agency
Atlanta Federal Center
61 Forsyth Street SW
Atlanta, Georgia 30303

If you have any questions, please feel free to call Ms. Marlene J. Tucker, at (404) 562-9536.


Beverly H. Banister
Director
Air, Pesticides, and Toxics
Management Division

5/7/12
Date

Withheld – Appendix A – Confidential Business Information (CBI)